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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 95-20
Computer III Further Remand Proceedings	)	
Bell Operating Company	)	
Provision of Enhanced Services	)	
	)	
1998 Biennial Regulatory Review	)	CC Docket No. 98-10
Review of Computer III and ONA	)	
Safeguards and Requirements	)	

COMMENTS OF AMERITECH

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Dated: March 27, 1998

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY 1

II. THE UNBUNDLING REQUIREMENTS OF THE 1996 ACT RESOLVE THE CONCERNS RAISED BY THE APPELLATE COURT IN CALIFORNIA III 2

III. SECTION 251 OF THE 1996 ACT HAS ELIMINATED THE NEED FOR ONA 5

IV. THE EXISTING CEI PLAN REQUIREMENTS SHOULD BE ELIMINATED 7

V. THE CI-III AND ONA REQUIREMENTS BLUNT INCENTIVES FOR INVESTMENT IN ADVANCED TELECOMMUNICATIONS CAPABILITY 12

VI. THE ACT'S DEFINITIONS OF "TELECOMMUNICATIONS" AND "INFORMATION SERVICES" SUBSUME THE CI-III "BASIC/ENHANCED" DICHOTOMY 14

VII. ATSI's PETITION SHOULD BE DISMISSED AS MOOT 15

VIII. CONCLUSION 18

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I. INTRODUCTION AND SUMMARY

Ameritech submits these Comments in response to the Further Notice of Proposed Rulemaking released on January 30, 1998.[1] The Commission's overall conclusions are correct. First. The overall pro-competitive, deregulatory framework of the Telecommunications Act of 1996[2], and the benefits which it brings to Information Service Providers ("ISPs") and their customers, fully support the use of a nonstructural safeguards regime for Bell Operating Company ("BOC") provision of intraLATA enhanced services. Also, the passage of the Act, in conjunction with technological and industry trends, eliminated the reasons for the Commission's original

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[1] In the Matter of Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, CC Docket Nos. 95-20, 98-10, Further Notice of Proposed Rulemaking, rel. January 30, 1998 (hereinafter "FNPRM").

[2] Telecommunications Act of 1996, Pub. L. NO. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 et seq. (hereinafter "1996 Act", or "Act").

adoption of the Open Network Architecture ("ONA") and Comparably Efficient Interconnection ("CEI") regimes. Since these outmoded requirements actually harm American consumers by delaying the availability of new services and discouraging innovation, Ameritech strongly supports the Commission's tentative conclusion that elimination of these burdensome requirements from BOC provision of intraLATA enhanced services[3] -- as well as BOC provision of payphone -- services is in the public interest. Also, the Petition filed in 1992 by the Association of Telemessaging Services International, Inc. ("ATSI") should be dismissed as moot.

II. THE UNBUNDLING REQUIREMENTS OF THE 1996 ACT RESOLVE THE CONCERNS RAISED BY THE APPELLATE COURT IN CALIFORNIA III.

As noted in the original NPRM[4], one of the original purposes of this proceeding is to respond to the concern of the 9th Circuit Court of Appeals in its California III decision[5] that: "(t)he FCC never explains why it now authorizes lifting structural separation when it recognizes that ... fundamental unbundling is not attainable at this time."[6] This led the Court to question whether the Commission had improperly retreated from its initial rationale of requiring "fundamental unbundling" as a condition of removing the structural separation requirements

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[3] The Commission's ONA and CEI regimes were developed prior to passage of the 1996 Act, which permitted the BOCs to offer interLATA telecommunications and information services under certain conditions (see 47 U.S.C. §§ 271(a)-(c), 272(a)(2)(B)-(C)). For this reason, the ONA and CEI requirements applied only to BOC provision of intraLATA enhanced services; thus, the applicability of those requirements to interLATA telecommunications or information services is not presented by the FNPRM. This is completely appropriate, since the imposition of such additional "safeguards" on top of the Act's stringent structural separation conditions for those offerings (see 47 U.S.C. §§ 272(b)-(e), 274 (b)-(f)) would obviously make no sense.

[4] Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, CC Docket No. 95-20, Notice of Proposed Rulemaking, 10 FCC Rcd 8360 (1995) (hereinafter "NPRM").

[5] California v. FCC, 39 F.3d 919 (9th Cir. 1994) (hereinafter "California III").

[6] California III, at 930.

imposed in the Computer II proceeding[7]. The concept of "fundamental unbundling" was initially presented by parties who argued unsuccessfully that the Commission should have required the BOCs to unbundle specific network facilities, or "building blocks," such as loops, switching functions, interoffice transmission facilities, and signaling – rather than network services such as "basic service arrangements".[8] The Commission declined at that time to require such "fundamental unbundling," but did not foreclose reconsideration of this decision "as technology and regulatory policies evolve."[9]

The Court's concern in this regard has been fully addressed because the market-opening obligations imposed by the Act go far beyond what the Commission contemplated as "fundamental unbundling." As aptly noted in the FNPRM, "(s)ection 251 of the Act requires Incumbent LECs ... to provide to requesting telecommunications carriers interconnection and access to unbundled network elements at rates, terms and conditions that are just, reasonable, and nondiscriminatory, and to offer telecommunications services for resale," as well as "to provide for physical collocation at the LEC's premises of equipment necessary for interconnection or access to unbundled network elements ... ."[10]

The statutory requirement to provide "network elements" on an unbundled basis is essentially

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[7] In its Computer II proceeding, the Commission addressed concerns regarding the potential for improper cost allocation and unlawful discrimination by requiring the then-integrated Bell System to offer enhanced services only through fully-separate subsidiaries. Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer II), Final Decision, 77 FCC 2d 384, 475-486 (1980) (hereinafter "Computer II Final Decision"). Following divestiture, this requirement was later extended to the Bell Operating Companies ("BOCs").

[8] In the Matter of Filing and Review of Open Network Architecture Plans, CC Docket NO. 88-2, Phase I, Memorandum Opinion and Order, 4 FCC Rcd 1, at ¶ 60.

[9] Id., at ¶ 72.

[10] FNPRM, at ¶ 29, citing 47 U.S.C. §§ 251 (2)-(4).

equivalent to "fundamental unbundling". The Act defines a network element as

> a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.[11]

To implement these statutory duties, the Commission's adopted rules defining the scope of an incumbent LEC's unbundling obligation.[12] These "core" unbundled network elements include local loops, network interface devices, local and tandem switching capabilities, interoffice transmission facilities, signaling networks and call-related databases, operations support systems functions, operator services and directory assistance. [13] This list expands upon the list of unbundled network facilities included in the original concept of "fundamental unbundling." As noted in the FNPRM, this expansion may be explained by the fact that "one of Congress' primary goals in enacting section 251 - to bring competition to the ... local exchange market – is more far-reaching than the Commission's goal for ONA," which was "to preserve competition and promote network efficiency" in the information services marketplace.[14]

The unbundling requirements imposed by both the Act and Commission Orders interpreting the Act, are clearly equivalent to or more extensive than the "fundamental" unbundling contemplated, but not required, in the Commission's ONA proceedings. Thus, the

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[11] 47 U.S.C. § 153(29).

[12] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499 (hereinafter "Interconnection Order"), at ¶¶ 366-541.

[13] 47 CFR § 51.319

[14] FNPRM, at ¶ 31.

concern of the 9th Circuit Court has been eliminated because, since the California III decision, "fundamental" unbundling has become a statutory duty for all incumbent LECs – including the BOCs.

III. SECTION 251 OF THE 1996 ACT HAS ELIMINATED THE NEED FOR ONA.

As discussed above, the level of the unbundling requirements imposed by section 251 of the 1996 Act are significantly "more extensive than that required under ONA."[15] In fact, the unbundling opportunities afforded by section 251 are more beneficial in other ways as well. For example, while unbundling under ONA was limited to new "services,"[16] the unbundling duties imposed by section 251 extend to the broadly-defined category of "network elements,"[17] which by its terms reaches down to require the unbundling of facilities and equipment within the ILECs' networks. Moreover, to "prevent the imposition of arbitrary and uneconomical unbundling requirements" on the BOCs, new ONA services were to be made available "based on the expected market demand for such elements ... , and the technical and costing feasibility of such unbundling."[18] By contrast, section 251 mandates the unbundling of such capabilities "at any technically feasible point,"[19] a term which -- as the Commission has expressly held -- excludes any

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[15] Ibid.

[16] These new services were "categorized as basic service arrangements ('BSAs'), basic service elements ('BSEs'), complementary network services ('CNSs'), and ancillary network services ('ANSs'). FNPRM, at ¶ 26.

[17] See supra, fn. 11.

[18] In the Matter of Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), CC Docket No. 85-229, Report and Order, 104 FCC 2d 958, at ¶ 217.

[19] 47 U.S.C. § 251(c)(3).

economic considerations.[20] Thus, the reach of the Act's unbundling duty is broader in several respects than that of the ONA requirements, and subsumes them in their entirety.

Ameritech also strongly supports the Commission's belief that Section 251 of the 1996 Act[21] "will result in increased variety in service offerings and lower service prices, to the benefit of all end users,[22] including so-called "pure" Information Service Providers ("ISPs."). The fact that "pure" ISPs do not qualify as "telecommunications carriers"[23] is immaterial. First, from a practical standpoint, most large Internet service providers are already either "telecommunications carriers" or are owned by or otherwise affiliated with telecommunications carriers.[24] Current industry trends also reflect the fact that newer ISPs are rapidly aligning with newer competitive local exchange carriers.[25] In either case, integrated providers of telecommunications and enhanced services can obviously avail themselves of the Act's far-reaching unbundling requirements. Therefore, ONA unbundling is totally unnecessary for ISPs that are themselves telecommunications carriers.

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[20] Interpreting the Act's definition of a "network element", the Commission ruled that "the term 'technically feasible' refers solely to technical or operational concerns, rather than economic, space or site considerations." Interconnection Order, at ¶ 198.

[21] Section 251 requires incumbent LECs to provide requesting telecommunications carriers with, inter alia, access to both interconnection and unbundled network elements "on rates, terms and conditions that are just, reasonable, and nondiscriminatory." 47 U.S.C. §§ 251 (b)(2)(D), (c)(3).

[22] FNPRM, at ¶ 33.

[23] The 1996 Act defines a telecommunications carrier as "any provider of telecommunications services" (except aggregators). 47 U.S.C. § 153(44); see also id. §153(46) for the definition of a "telecommunications service."

[24] For example, AT&T offers its own "Worldnet" line of Internet services; MCI offers its "internetMCI" product line; Worldcom/MFS/ UUNET also offers a full line of Internet services).

[25] Recent trade press coverage reflects this trend. See, e.g., CLECs: Partners or Predators? Carol Wilson, Inter@ctive Week, March 2, 1998, revealing that, inter alia, American Communications Services Inc. has acquired CyberGate Inc. and took over the customer base of Netrunner, Inc.; Intermedia Communications Inc. bought Digex

Moreover, there is no evidence of any need to maintain the cumbersome ONA apparatus for the sake of so-called "pure" ISPs. As noted in the FNPRM, "pure" ISPs can and do enter into partnering or teaming arrangements with telecommunications carriers, and thus obtain full rights to unbundled network elements and interconnection under section 251. In a recent example, MCI and Yahoo! recently announced a broad agreement to launch a new "co-branded, co-marketed online service" which offers "access to Yahoo!'s rich content and merchant services with MCI's fast and reliable network backbone and award-winning customer service".[26] Of course, "pure" ISPs can directly avail themselves of section 251 unbundling rights by either obtaining state certification on their own or by affiliation with already-certified carriers. As noted above, recent evidence suggests that this in fact is occurring. Thus, there is no demonstrated need to maintain the ONA process even for "pure" ISPs. If the Commission concludes otherwise, it could require the BOCs to continue to provide currently-tariffed ONA services for as long as market demand exists for such services. This would be consistent with the Commission's obligation to streamline or eliminate unnecessary regulatory requirements.

IV. THE EXISTING CEI PLAN REQUIREMENTS SHOULD BE ELIMINATED.

Ameritech fully supports the Commission's tentative conclusion that it should eliminate the requirement that BOCs file CEI Plans and obtain approval by the Common Carrier Bureau ("Bureau") for such plans prior to offering new intraLATA information services.[27] This requirement needlessly delays the availability of new services to the public, burdens the limited

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Inc.; WinStar Communications Inc. bought GoodNet; ICG bought Netcom On-line Communications Services Inc.

[26] Yahoo and MCI Unveil New Internet Online Service, Yahoo! Inc. Corporate Release, January 12, 1998.

[27] FNPRM, at ¶ 61.

resources of both the Commission and the BOCs, and discourages innovation.

As a result of the CEI Plan requirement, Ameritech has experienced significant delays in its attempts to offer customers innovative new services. The FNPRM aptly cites Ameritech's CEI Plan for Electronic Vaulting Service[28] ("EVS") as an example of why "the significant burden imposed by these requirements on the BOCs and the Commission outweighs their possible incremental benefit as additional safeguards against access discrimination."[29] Ameritech's experience with EVS demonstrates both the burden and the unnecessary delay of the CEI process. The EVS CEI Plan was filed February 27, 1997, and was unopposed by any party. During the intervening next ten months, the Plan was the subject of three ex parte visits, three letters from counsel for Ameritech, and requests for additional documentation exceeding five inches in total thickness. The Plan was finally approved – without any conditions, restrictions or modifications – by a 19-page Order issued December 31, 1997.[30] Therefore, because "(n)ew enhanced services shall not be provided until their CEI Plans are approved by the Common Carrier Bureau,"[31] the availability of this innovative service to Ameritech's customers was needlessly delayed for over ten months.[32]

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[28] FNPRM, fn. 179, citing Ameritech's Comparably Efficient Interconnection Plan for Electronic Vaulting Service, CCB Pol 97-03, Order, DA 97-2715 (rel. December 31, 1997).

[29] FNPRM, at ¶ 64.

[30] In the Matter of Ameritech's Comparably Efficient Interconnection Plan for Electronic Vaulting Service, CCB Pol 97-03, Order, DA 97-2715 (rel. December 31, 1997).

[31] In the Matter of Bell Operating Companies' Joint Petition for Waiver of Computer II Rules, DA 95-36, Memorandum Opinion and Order, 10 FCC Rcd 1724, at ¶ 30 (1995) (hereinafter "Interim Waiver Order").

[32] The Commission has recognized that even a 14-day advance notice requirement can deny a company its deserved first-mover advantages and thereby reduce incentives for innovation. See e.g. Tariff Filing Requirements for Nondominant Common Carriers, 8 FCC Rcd 6752 (1993) at ¶22, vacated on other grds., Southwestern Bell Corp. v. FCC, 43F.3d 1515 (D.C. Cir. 1995). It goes without saying that the delays inherent in the CEI process

EVS is not the only Ameritech offering whose availability to customers was substantially delayed by the CEI Plan requirement. A similar case involved Ameritech's CEI Plan for Message Delivery Service ("MDS"), which was also unopposed by any party, but not approved until more than six months after filing.[33] There can be no question that customers were needlessly deprived of these innovative new offerings for substantial periods of time.

Ameritech is aware of the enormous workload the Commission faces with limited resources. It is precisely for this reason that, despite the Commission's best efforts, the CEI process would continue to delay the availability of innovative new services to consumers.

In addition to delaying the availability of innovative new services, the CEI Plan regime harms consumers by distorting true competition by giving the BOCs' competitors a head start in the marketplace. Practically speaking, the current CEI requirements require BOCs to place in the public record a detailed description of each planned new enhanced service offering, including all functionality and intended customer uses of the service, and then stand by while competitors develop and roll out their versions of the planned new services. The existing CEI Plan requirement thus includes opportunities for the BOCs' competitors to "game the process" to their advantage. In the case of Ameritech's CEI Plan for Personal Access Service ("PAS"), the only party to oppose the Plan was MCI – which continued to add functionality described in the PAS CEI Plan to its competing "MCI One" service over a period of eighteen months, while contesting Ameritech's Plan before the Bureau. Ultimately realizing that the market window for its planned

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have a much more pronounced chilling effect on innovation.

[33] Ameritech's CEI Plan for MDS was filed June 11, 1995, and approved December 15, 1995. In the matter of Ameritech's Offer of Comparably Efficient Interconnection to Providers of Message Delivery Service, Order, 11 FCC Rcd 5590 (1996).

PAS offering had closed, Ameritech withdrew the Plan.[34] Such a result obviously cannot be said to be in the best interest of American consumers.

Finally, and of greater consumer harm, the existing CEI Plan requirement has been empirically demonstrated to have a chilling effect on innovation. As noted in Ameritech's recent Petition for regulatory relief under Section 706 of the 1996 Act,[35] a recent study[36] undertaken for Ameritech demonstrated that stricter regulation generally hinders the innovative process by which new services are created for and offered to customers. Specifically analyzing the patterns, frequency and timing of new enhanced services offered by the BOCs, this study found a statistically-significant increase in the number of services introduced during the period (1993-95) when CEI Plan filing and approval were not required prior to the offering of new enhanced services by the BOCs. Moreover, the study found that the cost of introducing a new service was substantially reduced by the removal of the CEI Plan requirement during that interim period. As a result of the delay and cost impacts of the CEI Plan requirement, the study further concluded that "there are undoubtedly otherwise-profitable services that are not profitable to introduce

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[34] Ameritech's CEI Plan for PAS was filed September 1, 1995, and ultimately withdrawn by Ameritech on May 29, 1997 (Public Notice, DA 97-1171, June 4, 1997).

[35] Petition of Ameritech Corporation to Remove Barriers to Investment in Advanced Telecommunications Capability (filed March 5, 1998), at 31-2.

[36] The Effects of Regulation on the Innovation and Introduction of New Telecommunications Services, James Prieger, Department of Economics, University of California, Berkeley and Law and Economics Consulting Group, Inc., January 10, 1998 (a copy of this study is provided as Attachment A hereto).

under the CEI regime."[37] In other words, the availability of new innovative services may be not only delayed but also completely prevented by the existing CEI requirements. For all these reasons, the existing CEI requirements for BOC provision of new intraLATA information services should be eliminated.

The Commission should likewise eliminate the existing requirement that BOC pay telephone operations must file amendments to their already-approved CEI plans for payphone services.[38] The statutory language under which this obligation was originally imposed directed the Commission to

> prescribe a set of nonstructural safeguards for [BOC payphone service which] shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry III (proceeding).[39]

The Commission fully discharged this statutory obligation when it originally "prescribed regulations" imposing the CEI requirements upon the BOCs' payphone operations[40] and approved the required CEI Plans on April 15, 1997.[41] The Act contains no language requiring that the Commission's CI-III CEI regime should remain immutable for all time. Since the instant CI-III Remand proceeding was pending on the date of the Act's passage, Congress could not be said to have been unaware that changes in the CEI requirements to which it referred in this section were likely. Nor does the Act (or its

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[37] Ibid., at 2.

[38] FNPRM, at ¶ 77.

[39] 47 U.S.C. § 276(b)(1)(C).

[40] Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, 11 FCC Rcd 20541, 20640-41.

legislative history) contain any indication that the CEI requirement as it existed when the Act was passed was intended to remain permanently in place for BOC payphone services regardless of future Commission action. When the Commission modifies -- or eliminates -- the CEI requirements upon which the new BOC payphone rules were based, the payphone regime must also be changed accordingly.

V. THE CI-III AND ONA REQUIREMENTS BLUNT INCENTIVES FOR INVESTMENT IN ADVANCED TELECOMMUNICATIONS CAPABILITY.

As noted in the FNPRM, the Commission's existing rules were designed for traditional circuit-switched voice networks rather than the emerging packet-switched data networks.[42] Similarly, the BOCs' existing networks were designed to carry a high volume of short holding-time voice calls, rather than the longer holding-time connections which characterize the increasing proportion of Internet traffic and other high-speed data connections now offered to these networks.[43] Ameritech believes that the only clearly-effective solution to this mismatch between the design of the existing circuit-switched network and the ever-increasing demand for data-intensive communications is enormous new investment by the BOCs in packet data capability. Unfortunately, the incentives to make the necessary investment are blunted by a variety of regulatory requirements which were designed for earlier times and have outlived their usefulness. For this reason, Ameritech recently requested relief under section 706 of the Act[44] from several of

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[41] FNPRM, at ¶ 76.

[42] FNPRM, at ¶ 90.

[43] The proportion of all minutes of use on Ameritech's network estimated to be Internet-driven has increased from approximately 9% in March 1997 to over 14% at present. This trend reflects the facts that (1) the number of Internet calls handled by Ameritech grew by over 100% in a recent one-year period, and (2) the average holding time for voice calls is just over four minutes -- compared to an average of over 23 minutes per Internet call.

these outmoded requirements -- including the interLATA prohibition and some of the section 272 separation requirements -- as applied to advanced telecommunications capability.[45]

For purposes of the instant inquiry, the Commission's existing CEI and ONA requirements should also be viewed through the lens of Congress' directive that the FCC and state regulators

> shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans ... by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.[46]

Like the unbundling and resale requirements imposed on incumbent local exchange carriers ("ILECs") by section 251(c), the existing CEI and ONA requirements have the effect of discouraging BOC investment in the infrastructure necessary to bring advanced telecommunications capability to customers. Fiscal responsibility to its shareholders requires Ameritech to make such investments only if it expects to earn a reasonable return on them. The substantial infrastructure investment required for widespread deployment of packet switching capability will continue to be strongly discouraged if the BOCs are required to unbundle such capability and make it available to its competitors. If ONA and CEI requirements are applied to advanced new information and data transport capabilities, the BOCs alone will bear the risk of

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[44] 47 U.S.C. § 706.

[45] Petition of Ameritech Corporation to Remove Barriers to Investment in Advanced Telecommunications Capability, filed March 5, 1998. This Petition sought various forms of regulatory relief for Frame Relay service, Switched Multimegabit Data Service ("SMDS"), Asynchronous Transfer Mode service ("ATM"), data networking services including Internet Protocol ("I/P") and transaction services, intranet/extranet services and electronic commerce applications, high-speed broadband transport services used as components of switched broadband services, and high-speed end-user access technologies (such as xDSL and ADSL) when used by customers to connect to the services listed above.

[46] 47 U.S.C. § 706(a).

such investment in new service offerings -- which would also be sold by competitors who could obtain access to any such functionality under section 251.[47] For the reasons underlying Ameritech's request for relief under section 706 from the Act's unbundling requirements, the CEI and ONA requirements should be lifted as well.

VI. THE ACT'S DEFINITIONS OF "TELECOMMUNICATIONS" AND "INFORMATION SERVICES" SUBSUME THE CI-III "BASIC/ENHANCED" DICHOTOMY.

As noted in the FNPRM, the Commission has concluded that although the wording of its definition of "enhanced services"[48] differs slightly from that of the 1996 Act's definition of "information services,"[49] there is no basis upon which to conclude that Congress intended a significant departure from the Commission's enhanced services construct.[50] Ameritech concurs with that conclusion, and believes that, consistent with that holding, it is also in the public interest that the Commission's corresponding definition of a "basic service"[51] be extended to the same

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[47]Insofar as Ameritech intends to offer packet switched services through a separate subsidiary, this may not be an issue for Ameritech. Nevertheless, other BOCs may not have the same business plans as Ameritech and, as a matter of principle, there is no reason why new network investment should have to be shared with a company's competitors, particularly given the chilling effect such a rule would have on investment incentives.

[48] The Commission's rules define enhanced services as "services, offered over common carrier transmission facilities used in interstate communications, which employ procession applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information'; or involve subscriber interaction with stored data." 47 CFR § 64.702(a).

[49] The 1996 Act defines "information service" as: "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service." 47 U.S.C. § 153(20).

[50] FNPRM, at ¶ 40, citing Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, at ¶ 102 (1996).

[51] The Commission has long held that "(a) basic telecommunications service is one that is limited to the common

functionality encompassed by the Act's definition of "telecommunications."[52]

Harmonizing these two parallel definitions will maintain stability across the industry by matching these two analogous definitional schemes which distinguish the regulatory treatment accorded to specific services. Unless the Commission makes clear that its exemption of "enhanced services" from common carrier regulation matches the Act's parallel treatment of "information services" as separate from "telecommunications," regulatory uncertainty will remain. There is simply no basis to conclude that Congress intended a departure from the Commission's traditional usage of its basic/enhanced dichotomy, and the Commission should add clarity and certainty to this area by so holding.

VII. ATSI's PETITION SHOULD BE DISMISSED AS MOOT.

In this section, Ameritech responds to the Commission's request for comment on the long-pending joint-marketing issue raised in a Petition filed in 1992 by the Association of Telemessaging Services International, Inc. ("ATSI"). As noted in the FNPRM, ATSI argued, inter alia, that joint marketing by BOCs of intraLATA basic and information services should be prohibited.[53] This argument was premised upon various claims of BOC discrimination against nonaffiliated voice messaging providers, as well as other alleged "bad acts" related to BOC

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carrier offering of transmission capacity for the movement of information. ... In offering a basic transmission service ..., a carrier essentially offers a pure transmission capability over a communications path that is virtually transparent in terms of its interaction with customer supplied information." Computer II Final Decision, at ¶¶93, 96.

[52] Telecommunications is defined in the 1996 Act as "the transmission, between or among points of the user's choosing, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. § 153(43).

[53] FNRPM, at ¶ 128.

provision of voice messaging services.[54] Because they related to CPNI issues and other topics covered by the 1996 Act, the bulk of ATSI's claims have been dismissed by the Commission as moot.[55]

Like its other claims, ATSI's remaining arguments against joint marketing by BOCs of basic and information services were also rendered moot in their entirety by the 1996 Act, and they should likewise be dismissed. Congress' language on the subject of telemessaging expressly contemplates joint marketing of such services by the BOCs; it applies by its terms to "any local exchange carrier ("LEC")subject to the requirements of section 251(c)"[56] -- i.e., incumbent local exchange carriers. In fact, the very definition of telemessaging service under section 260 includes "voice mail and voice storage and retrieval services ..., and any ancillary services offered in combination with these services."[57] It is patently obvious from the Act's express language that joint marketing by LECs of voicemail services and such "ancillary services" is permissible.

As if anticipating ATSI's arguments, the Act prohibits both discrimination and cross-subsidy by LECs offering voicemail and "ancillary" services.[58] In addition, the Act provides a specific remedy, in the form of an expedited 120-day FCC complaint procedure, to ATSI and other parties who believe they may have been the target of such "bad acts" as ATSI alleges.[59] To Ameritech's knowledge, neither ATSI nor any other

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[54] FNPRM, at ¶ 129.

[55] FNPRM, at ¶127.

[56] 47 U.S.C. § 260(a).

[57] 47 U.S.C. § 260(c) (emphasis added).

[58] 47 U.S.C. § 260(a)(1)-(2).

voice mail provider has yet filed such a complaint against Ameritech. At any rate, this specific remedy should be the first resort of ATSI if it believes such "bad acts" have continued to occur, and will "result in material financial harm to a provider of telemessaging service"[60] In view of Congress' specific prohibition of conduct such as that of which ATSI complains, any action by the Commission outside of the specific remedies provided in section 260 would appear to be inappropriate.

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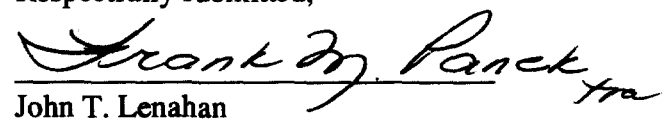
[59] 47 U.S.C. § 260(b).

[60] Ibid.

VIII. CONCLUSION

For the reasons set forth above, the Commission should eliminate both the ONA and CEI regimes as applicable to BOC provision of both enhanced services and payphone services, and reconcile its definitions of "enhanced services" and "basic services "with the Acts' definitions of "information services" and "telecommunications. In addition, ATSI's Petition should be dismissed as moot.

Respectfully submitted,



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Dated: March 27, 1998

ATTACHMENT A

The Effects of Regulation on the Innovation and Introduction of New Telecommunications Services

a study funded by and conducted for

Ameritech

by

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March 2, 1998

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The Effects of Regulation on the Innovation and Introduction of New Telecommunications Services

Executive Summary

This study examines the pernicious effects that regulation can have on the innovation and the introduction of new telecommunications services. I use data from three different spheres of regulated telecommunications activity: federally regulated advanced telecommunications services, federally regulated access services, and local services regulated at the state level. In each case I find that stricter regulation hinders the innovative process by which new telecommunications services are created and introduced to subscribers.

The results of the study indicate that relaxed regulation benefits consumers of telecommunications services in two ways. First, more new services are introduced, which provide net benefits to customers purchasing them. Maintaining the status quo of tighter regulation may have prevented many of these services from ever being offered. Consequently, hundreds of millions of dollars of benefits could have been lost by consumers.

The second, and related, beneficial effect for consumers is that relaxed regulation allows new services to be introduced with less delay. Regulatory delay disallows consumers from enjoying the benefits of the new services immediately. Worse yet, delayed approval can preclude a new service from ever being offered to customers. The regulated company may simply withdraw a potential new service because the delay makes the service unprofitable to introduce. Regulatory delay also allows competitors to copy the service and to pre-empt the innovating company. The innovating firm fails to reap the rewards of its efforts, and may be discouraged from future innovation. These two effects of relaxed regulation were responsible for *tripling* the number of new services in some of the jurisdictions examined.

A. The Comparably Efficient Interconnection Regime: Enhanced Services and the Removal of Structural Separations Requirements

This first part of the study examines AT&T and the RBOCs' experience with integrated enhanced services. After the initial requirement of structural separation in the offering of any enhanced service, the FCC allowed AT&T and the RBOCs to offer such services on an integrated basis. Such offerings required approval of a plan to ensure Comparably Efficient Interconnection (CEI) to the network elements underlying the service to other providers. Enhanced services have been introduced via CEI plans or waivers since 1987, except for an interim (1993-1995) in which CEI plans were not required. We can use this "natural experiment" to compare innovation under the CEI regime with innovation during the freer interim.

The analysis, performed on the 106 new enhanced services introduced via CEI plans or waivers, lends support to the hypothesis that the period of lighter regulation spurred service innovations. The actual number of services innovated in the interim is 58% higher than the model predicts would have been introduced if the CEI plan requirements had still been in place. Ameritech alone innovated over twice as many services during the interim as the model predicts would otherwise have been the case.

The analysis also looks at the determinants of CEI plan approval delays. The average predicted approval delay is 190 days per service. Amendments of previous plans are approved in 46% less time than is normally the case; waiver requests are approved 50% slower than otherwise. "Me too" filings are approved 29% quicker than other plans, lending credence to the oft-quoted "penalty of the pioneer."

B. Price Caps and New Services in the Federal Access Tariff

The second part of the study examines new federally regulated access services introduced by Ameritech in its regional operating territory. The 102 new services introduced into Ameritech's federal tariff during the period 1984–1997 fall into three main categories: switched, special, and other access services. In 1991, the FCC switched from traditional rate of return regulation to price caps. Many economists argue that price caps speed the introduction of new technology by allowing firms to retain as profit a greater part of the economic benefit created by the service. Indeed, the FCC designed its price caps so that new services are not included in the cap in the first year of introduction, to allow the innovator even greater appropriation of the benefit.

The model estimates that moving to price caps almost tripled the number of services introduced per year, increasing the average number of new services by eight per year (from 3.8 to 11.5). The effect of price caps is greatest on special access services, and least on switched access services. Furthermore, expected approval delay times fell from 107 days before price caps to 40 days after.

One would like to estimate the welfare that consumers received from these new services. Consumer surplus from new services is often very large, because the incremental (gross) benefit from a new product is the entire area under the demand curve up to the quantity purchased. Unfortunately, it is not possible to estimate directly consumer surplus from all these new services. These services, because they are new, have been in the market for a short time only and the data simply do not exist for demand curves to be estimated. Although one cannot directly estimate the surplus consumers enjoy, one *can* provide a lower bound to the gross benefits accruing to consumers by looking at their expenditure. For example, if consumers spend $5M on a new service, then we know that the benefits they enjoyed from the service were *at least* $5M, and potentially much larger.

Therefore, to measure the gains to consumers from the change to price caps, I calculate the expected value of the extra expenditure on access services resulting from the switch to price caps. Expenditure increases after price caps for three reasons: first, more services are introduced; second, fewer approvals are delayed (beyond the minimum mandated delay); and third, approvals that are delayed are delayed shorter amounts of time. The expected consumer expenditure during the 1991–1997 period under the counterfactual assumption that price caps were not implemented is $120M. Under the (factual) assumption that price caps were in place during that time, expected expenditure is $391M for the period. The difference, which may be attributed to the onset of price caps, is $271M for the period, or $42M per year. Thus, by the argument above, gross consumer benefits are at least as large as these figures.

C. Opportunity Indiana: Alternative Regulation at the State Level

The third part of the study examines Ameritech Indiana's experience with new tariff filings under Opportunity Indiana, an alternative regulatory scheme implemented in July 1994. Opportunity Indiana dramatically decreased the delays associated with tariff approvals for new services, and appears to have greatly increased the number of services introduced. The analysis was performed on the 51 new services introduced by Ameritech Indiana during the six year study period (July 1991–June 1997). The results confirm that the increased number of new services is not due solely to exogenous economic or demographic factors but appears to be from the reduced regulatory burden of Opportunity Indiana itself. The analysis also estimates that Opportunity Indiana was responsible for a tripling of new services introduced and a 17-fold reduction in average time-to-approval.

The impact of Opportunity Indiana is most powerfully seen by estimating total consumer expenditure for the three year period before and after Opportunity Indiana began. As explained above, these expenditure figures can be viewed as underestimates of gross consumer benefits. Opportunity Indiana increases total consumer expenditure for a three year period by anywhere from $18M to $182M, depending on the assumed expenditure per service. Using the average projected expenditure per new service from the Opportunity Indiana period, total consumer expenditure for the period is estimated to increase by $131M due to Opportunity Indiana. Consumers making this expenditure therefore valued the incremental benefits from the new services at *more* than $131M.

Ameritech Indiana's experience with promotional offerings ("promos") is another part of the success story of Opportunity Indiana. Promos typically take the form of a waiver of charges (recurring or non-recurring) associated with a telecommunications service for a limited time, and are one example of marketing innovations made feasible by Opportunity Indiana. Before Opportunity Indiana, promos that waived charges for new subscribers were not allowed at all. Sixty-five promos have been approved during Opportunity Indiana, compared with *none* for the three years before Opportunity Indiana. The promos increased consumer welfare by attracting customers who would not have purchased the services otherwise and by reducing the price for subscribers who would have purchased them anyway. Furthermore, the streamlined tariff approval process ensured that consumers did not have to wait unduly long to begin accruing these benefits.

D. Conclusion

This study provides evidence from three different regulatory regimes that lighter regulation is associated with the innovation and introduction of more new services, to the benefit of consumers and telecommunications companies alike. Whatever the purported benefits of regulation are need to be weighed against the considerable adverse consequences of regulation documented by this study.